

## **AMENDED FINAL STATEMENT OF REASONS:**

The Initial Statement of Reasons (ISOR) is incorporated by reference.

The California Department of Corrections and Rehabilitation (CDCR or the Department) proposes to amend Sections 3000, 3075.2, 3768.2, and 3768.3 of Title 15, Division 3 of the California Code of Regulations (CCR), and adopt Sections 3750, 3751, 3752, 3753, 3754, 3756, 3760, 3761, 3761.1, 3762, 3763, 3764, 3765, and 3766, concerning Parole Revocation Realignment. This rulemaking action will provide regulatory authority to CDCR parole agents to carry out necessary parole revocation procedures as provided for by Assembly Bill (AB) 109, Budget Act of 2011: Public Safety Realignment (Chapter 15, Statutes 2011), as amended by Senate Bill (SB) 1023 (Chapter 43, Statutes of 2012) and SB 76 (Chapter 32, Statutes of 2013), (Realignment Legislation).

## **UPDATES TO THE INITIAL STATEMENT OF REASONS**

On January 17, 2014, the Department submitted a request to the Office of Administrative Law (OAL) for the emergency adoption of these regulations concerning Parole Revocation Realignment. This request was approved on February 6, 2014, with an effective date of February 6, 2014.

The Notice of Emergency Regulations was published on February 21, 2014, which began the public comment period. The Notice of Change to Regulations (NCR) #14-03 was mailed the same day in addition to being posted on the CDCR intranet and internet websites. The public hearing was held on April 18, 2014, the final day of the public comment period. No one commented at the public hearing. During the 45-day comment period, one written comment was received. This comment is discussed below under the heading, "*Comments Received During the 45-Day Comment Period.*" The Department made thirteen substantive changes to the text. These changes and reasons for them are found below under the heading, "*Changes to the Text of Proposed Regulations.*" These changes were noticed to the public with two 15-Day Renotices. The first Renotice had an effective comment period of May 5 – May 23, 2014; and the second Renotice had an effective comment period of June 4 – June 20, 2014. The Renotice documents were distributed to the commenter who responded during the initial 45-day comment period and were posted on the CDCR intranet and internet websites. No comments were received during either of the Renotice comment periods. In addition, one non-substantive change is made to Section 3756 of the text. The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the regulations. The change, and the reason for the change, is included under the heading, "*Changes to the Text of Proposed Regulations.*"

At the direction of the Department of Finance, the following amendments are made:

- On page one of the ISOR, the following text is added to first reference to Assembly Bill 109, "as amended by Senate Bill (SB) 1023 (Chapter 43, Statutes of 2012) and SB 76 (Chapter 32, Statutes of 2013), (Realignment Legislation)." This additional language clarifies that initial legislation (AB 109) relating to parole revocation realignment subsequently was amended by SB 1023 and SB 76 and are collectively referenced as Realignment Legislation.
- Also on page one of the ISOR, the statement, "Under the provisions of AB 109, beginning July 1, 2013, low-level felony (non-serious, non-violent, and non-sex related) offenders are redirected to the county jails to serve their commitment, rather than in the state prisons, and are under the jurisdiction of the local courts for subsequent parole revocation adjudication," is amended to read: "Under the provisions of Realignment Legislation, low-level felony offenders

(non-serious, non-violent, and non-sex related) serve their sentence in county jails. Additionally, parolees (with the exception of certain parolees who were previously sentenced to life terms) who violate their conditions of parole serve their revocation term in county jail. Beginning July 1, 2013, the trial courts assumed jurisdiction from the Board of Parole Hearings for subsequent parole revocation adjudication.” This language change clarifies that the effective date of July 1, 2013, applies only to the jurisdiction of the trial courts for parole revocation adjudication.

## **DETERMINATION**

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed.

The Department has determined that this action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CDCR’s initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business or small businesses than the action planned.

## **ASSESSMENTS, MANDATES, AND FISCAL IMPACT**

The Department has determined that this action will not have an impact on the creation of new jobs in the state of California, or the elimination of existing jobs, and will not have an impact on the creation of new business in the state of California, or in the elimination or expansion of existing business. Statute requires parolees to serve sentences for low-level crimes, as specified, and terms of parole revocation, in county jail and the proposed regulations update the Department’s parole revocation regulations to comply with statute concerning the court revocation process as amended by Realignment Legislation.

The Department has determined that this action does not affect small businesses or have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states; or on housing costs.

## **FORMS INCORPORATED BY REFERENCE**

The following Department forms were referred to throughout the proposed regulation text: CDCR 1244, CDCR 1500, CDCR 1502-B, CDCR 1515, CDCR 1515-Addendum, CDCR 1521-B, CDCR 1676, CDCR 2271, CDCR 2274, and CDCR 2278. These forms were made available to the public throughout the rulemaking process, and will continue to be made available upon request.

The Department uses over 1,500 regulatory forms, including the above-referenced forms. Because of this high volume, it would be unduly cumbersome, expensive, and impractical to print all the forms in the Title 15 due to the space needed for these forms and the high cost of printing all of these forms. Therefore, Department forms are incorporated by reference into the Title 15 within their relevant section, when appropriate.

Additionally, the proposed regulations also refer to Judicial Council of California Forms, CR 300, Petition for Revocation; CR 301, Warrant Request and Order; and CR 302, Request and Order to Recall Warrant. These forms were also made available to the public throughout the rulemaking process, and will continue to be made available upon request. It would be impractical for the Department to publish these forms into the CCR with these proposed regulations as these forms are not Department forms, and the Department is unable to ensure the current forms to the public.

## **CHANGES TO THE TEXT OF PROPOSED REGULATIONS**

**Non-substantive formatting changes and typographical errors and/or omissions are corrected throughout the document to ensure clarity and consistency.**

**In the Table of Contents under Article 19, the contents of the Article are amended** to remove the text “Form CR 300” from the title of Section 3763. The title of Section 3763 now reads, “Petition for Revocation.” This change is necessary for compliance with the parole revocation process as provided for by Realignment Legislation by removing the directive requiring the utilization of a specified form when petitioning the county Superior Courts for a revocation of parole as there are 58 counties in California each with its own jurisdiction, and parole agents shall observe the filing requirements within each county.

### **Section 3075.2. Releases**

**Subsection 3075.2(b)(2)(A)** is amended for clarity by updating the revision date of the CDCR Form 1515, Notice of Conditions of Parole. Also for clarity, the reference to the CDCR Form 1570, Guidelines for Parole, is deleted as the form is obsolete.

### **Section 3750. Authority to Place a Parole Hold**

**Subsection 3750(a) is deleted** as non-revocable parole is no longer an option for parole sentencing pursuant to Realignment Legislation. Subsequent subsections are renumbered.

**Current subsection 3750(d) (formerly subsection 3750(e) of the originally proposed text) is amended** to delete the reference to the Penal Code (PC) Section 3000.01(c) and replace it with PC Section 3000.08(c) in regards to the PC authority that provides Department parole agents the authority to place a parolee on a parole hold when the parolee has been confined in a county jail facility as the result of a technical violation, or to arrest a parolee and place him or her in a county jail facility on a parole hold pending investigation of the alleged violations of parole or of the law. Additionally, the reference to subsection 3750(b) is amended to accurately reference the renumbered subsection 3750(a).

### **Section 3754. Notification of Reasons for a Parole Hold**

**Subsection 3754(b) is amended** to include the revision date for CDCR Form 2271, Notice and Request for Assistance During Parole Proceeding. This change is needed for clarity as the Form was recently revised.

For clarification, the Notice of Change to Text as Originally Proposed, issued May 5, 2014, provides that CDCR Form 2271 is revised, “In Section III, a selection box is added in reference to the CDCR Form 2275-CJ (04/14), Request for Reasonable Accommodation for Access to Housing and/or Program(s) in a County Jail. Directing the CDCR staff to provide the CDCR Form 2275-CJ to inmate/parolees, ensures inmates/parolees have a process in place by which to file a grievance in the event a reasonable accommodation or modification for a physical disability is not provided.” For clarification, please note that in regards to the CDCR Form 2275-CJ, the CDCR Form 2271 in fact only reads “I have provided a CDCR 2275-CJ (04/14), Request for Reasonable Accommodation for Access to Housing and/or Program(s) in a County Jail, and a postage pre-paid, pre-addressed envelope to the parolee.” The Notice is incorrect as CDCR employees are not directed to provide the CDCR Form 2275-CJ to inmates/parolees, as the CDCR Form 2271 only asks CDCR employees to confirm whether or not the CDCR Form 2275-CJ has been provided.

### **Section 3756. Length of a Parole Hold**

**The Note Section is amended** to add PC Section 3000.08(g) as reference. This change is a non-substantive change per Section 100 of Title 1 of the CCR and does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of these regulations as the language of PC Section 3000.08(g) is already stated in subsection 3756(a)(1) of the text of proposed regulations in regards to the confinement period in a county jail not to exceed 180 days for all parolees with a with a parole hold/discovery date on or after October 1, 2011, unless otherwise provided by law.

### **Section 3763. Petition for Revocation**

**The title of Section 3763 is amended** to remove the text, “Form CR 300.” The title now only reads, “Petition for Revocation.” This change removes the directive requiring the utilization of a specified form when petitioning the county Superior Courts for a revocation of parole and is necessary for Department compliance with the parole revocation process as provided for by Realignment Legislation.

**Section 3763 is amended** to update the revision date for Judicial Council of California form CR 300, Petition for Revocation, as the form was recently revised. The text “or the unique court form established by a court for this purpose in a particular county” is also added in reference to the use of the form CR 300. The additional language provides for the utilization of an available county-specified form that is created by the county Superior Court for the purpose of petitioning the county Superior Court for the revocation of a parolee’s parole. This change is necessary for Department compliance with statute concerning the parole revocation process.

**Subsection 3763(a) is amended** to add the text, “or the unique court form established by a court for this purpose in a particular county” in regards to filing a petition for revocation of parole with the county Superior Court. This additional language is necessary for Department compliance with statute concerning the parole revocation process.

**Subsection 3763(a)(5) is amended** for clarity and consistency by updating the reference to the CDCR Form 1515, Notice and Conditions of Parole, as the Form was recently revised.

**Subsection 3763(b) is amended** for clarity by including the revision date for CDCR Form 2278, Arrest Report, as the Form was recently revised.

**Subsection 3766(b)(1) is amended** to add the text, “or the unique court form established by a court for this purpose in a particular county” in regards to filing a warrant request for a parolee’s arrest. This additional language provides for the utilization of an available county-specified form that is created by the county Superior Court for the purpose of filing a request for a warrant for a parolee’s arrest with the county Superior Court. This change is necessary for Department compliance with statute concerning the parole revocation process.

**Subsection 3766(b)(3) is amended** to add the text, “or the unique court form established by a court for this purpose in a particular county” in regards to filing a request to recall an issued warrant order. This additional language provides for the utilization of an available county-specified form that is created by the county Superior Court for the purpose of filing with the county Superior Court a request to recall an arrest warrant order. This change is necessary for Department compliance with statute concerning the parole revocation process.

## **PUBLIC HEARING COMMENTS**

### **Public Hearing: Held April 18, 2014, at 10:00 a.m.**

No comments were received at the hearing.

## **SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS:**

### **COMMENTS #1**

**Comment 1A:** Commenter states he is concerned that the proposed regulations do not include provisions to send adequate information about a parolee’s disability to the Superior Courts for parole revocation proceedings. Commenter states that under *Armstrong v. Brown*, CDCR must track and identify parolees with disabilities and ensure they receive accommodations and effective communication sufficient to understand parole proceedings. Commenter further states that section 3763, Petition for Revocation, provides that parole agents shall submit a number of forms to the Superior Court along with the form CR 300 when petitioning for a revocation of parole, (including the Parole Violation Report, Probable Cause Determination, Criminal History, Parole Violation History, and the Notice of Conditions of Parole), but that the parole agents do not provide information concerning a parolee’s disability. Commenter suggests that a new subsection, 3763(7), should be added to the proposed regulations to include the provision of CDCR disability information.

Commenter states that this disability information is already contained in a CDCR database called DECS (Disability and Effective Communication System) and already exists for most if not all CDCR prisoners with disabilities. Commenter suggests that a DECS summary report is generated and provided to the Superior Court along with the form CR 300 when petitioning for a revocation of parole. Commenter states that requiring the DECS summary would provide the Superior Court with necessary information to determine whether a parolee requires an accommodation for the revocation proceedings, and that without this disability information, the Superior Court will not be aware of an inmate’s disabilities until the parolee arrives for the parole revocation proceeding and the parolee will therefore not be accommodated, or the proceeding will be improperly delayed. Additionally, Commenter states that providing the Superior Court with the disability information that is contained in DECS will ensure that the courts have “third-party” assessments of disability information to assess any parolee’s claim of disability, and that without such information, the courts will be left with limited information through which to assess a parolee’s claimed disability.

Alternatively, Commenter states CDCR could provide the disability information to the Superior Court by including the CDCR Form 2271, Notice and Request for Assistance During Parole Proceeding, along with the form CR 300 when petitioning the Superior Court for a revocation of parole. Commenter states that the CDCR Form 2271 is the successor to the form BPH 1073, which was utilized by the Board of Parole Hearings (BPH) to provide disability information to BPH so they could provide necessary accommodations to parolees during parole revocation proceedings and therefore that it is appropriate for CDCR to now provide this disability information to the Superior Court.

**Response 1A:** The issues that Commenter raises apply to proceedings under county jurisdiction. The county courts have established procedures to address these concerns. The Division of Adult Parole Operations (DAPO) is compliant with the California Rules of Court, submitting all forms that have been approved by the Administrative Office of the Courts. The CDCR Form 2271, Notice and Request for Assistance During Parole Proceeding, contains personal medical information of a parolee and is not considered public information. The CDCR Form 2271 is provided to the parolee's defense counsel and to the district attorney's office.

**Comment 1B:** Commenter states that a number of the proposed regulations ignore CDCR's responsibilities under the Americans with Disabilities Act (ADA) and the Armstrong Remedial Plan, and provides proposed section 3754, Notification of Reasons of a Parole Hold, as example. Commenter states that Section 3754 fails to require the noticing parole agent provide effective communication to parolees when providing the CDCR Form 2271, Notice and Request for Assistance During Parole Proceeding, and when providing the reasons for the reinstatement of the parole hold, as required by the ADA and the Armstrong Remedial Plan. Commenter states that the proposed regulations should be amended to require that this information be provided to parolees with disabilities using Braille, assistive hearing devices, plain language, or other accepted methods for ensuring effective communication, as required by the ADA and the Armstrong Remedial Plan.

**Response 1B:** DAPO has policies and procedures in place in addition to federal court orders that direct DAPO staff to provide information to staff at county jail facilities regarding California parolees who are subject to the Armstrong Remedial Plan and Armstrong County Jail Order. These proposed regulations apply to all California parolees who are subject to the county court's judicial proceedings. The county courts have established procedures for ensuring Due Process and compliance with the ADA for all persons subject to the county court's judicial proceedings. Any remedy for Due Process failures can be addressed by the judge hearing the case or by judicial appeal.

**Comment 1C:** Commenter states that the United States District Court for the Northern District of California and the Ninth Circuit Court of Appeals in *Armstrong v. Brown* have interpreted proposed Section 3765, Legal Custody and Jurisdiction of County Jail Facility, to require CDCR to continue to provide some level of ADA accommodation to parolees housed in county jail facilities. Commenter suggests the following language be added at the end of the section:

Notwithstanding these provisions, CDCR and DAPO are required to provide the county jail facility with information about a parolee's disability upon placement of the parole hold and to respond to grievances submitted by parolees regarding their disability, accommodation, or lack thereof, at county jail facilities.

Commenter further states that the Superior Court of California forms that are attached to these regulations, the CR 300, Petition For Revocation; CR 301, Warrant Request and Order; and CR 302, Request and Order to Recall Warrant, all fail to provide a space in which the arresting agent can indicate whether he or she has investigated the disabilities of the parolee. Commenter states that these forms

should be revised by the “Court” to include this information, or that CDCR should include regulations to ensure that parole agents are taking into account disability issues when completing these forms.

**Response 1C:** Commenter is concerned regarding the lack of information included on the CR 300, CR 301 and CR 302. The Administrative Office of the Courts created these judicial forms for county probation departments and DAPO to utilize when filing cases with the county court. The DAPO has policies and procedures in place in addition to federal court orders that direct DAPO staff on how to proceed with cases that are subject to the Armstrong Remedial Plan and Armstrong County Jail Order. The county courts have established procedures to address these concerns.

#### **SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE RENOTICE COMMENT PERIODS**

**Renotice Public Comment Period: May 5, 2014 through May 23, 2014.**

The Renotice documents were forwarded to the commenter who provided a written comment during the initial 45-Day public comment period. In addition, the Renotice was placed on the Department's intranet and internet websites. No comments were received.

**Renotice Public Comment Period: June 4, 2014 through June 20, 2014.**

The Renotice documents were forwarded to the commenter who provided a written comment during the initial 45-Day public comment period. In addition, the Renotice was placed on the Department's intranet and internet websites. No comments were received.